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DO MORAL MATTERS MATTER - ENVIROMENTALLY?

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Beyond moral extensions

Some of us find ourselves not merely at
odds with mainstream environmental thinking--



PHILOSOPHY

which remains shallow, heavily exploitative, and likely disastrous, not only for many other species but for many humans as well--but uneasy also with main deeper environmental approaches, most of which now emanate from North America. Elsewhere I have, to my cost, taken issue with Deep Ecology, a movement with European origins quickly captured in California, but here I wish to criticize forms of Moral Extensionism that now have a main base in the southern U.S.A., forms that elaborate moral standing, considerability, and rights theories. Again the criticism will not be purely negative; positive alternative positions will begin to emerge in early morning outline.

Moral extensionisms extend morality and conventional chauvinistic moral apparatus beyond its conventional (but certainly unwarranted) confines to certain subjects and areas where it has not been applied, or else, more likely, has been used for discrimination and other negative purposes. They simply extend the moral apparatus without much in the way of adjustment, with egalitarian assumptions (equal value, equal rights, equal consideration, etc.) applied to a wider class of "moral" subjects. Moral extensionism is a typical and useful weapon of liberation and rights movements (though such movements could proceed with more accurate but less publicly impressive equipment. As seen by a conservative opposition, moral extensionisms endeavor to bend morality to certain illegitimate purposes, since not only do the extensions make nonsense of the notions involved (rights, equality, standing, interests, etc.), but in any case everything is sufficiently in order, at least on the boundaries, as it is! Seen from a wider environmental perspective, extensionisms are not always unjustified in where they go but in how they go, in the pseudo-egalitarian facades of the extensions, and more important in where they stop. For though privilege is widened and so diluted, it remains. The zones of extension remain too limited, and things outside the usual extensions, such as forests, species, ecosystems, continue to be open to substantial mistreatment, exploitation, and so on. Nor can the sorts of things involved plausibly be brought within the extension fold (though isolated efforts are not lacking), for they appear to lack requisite characteristics on which extensions operate, such as sentience, pain receptivity, interests, indi-

viduality, or whatever. For example, the very idea of an environmental ethic, which serves to protect uninhabited environments and to justify requisite respect for natural systems and communities, founders on the moral rights position propounded by Regan in defence of certain animals.

Morality is a many purpose weapon, often deployed by pressure and interest groups. Throughout modern history it has typically been used to ground and justify a wide range of activity and practices hostile to natural environments. Humans are entitled to this or that; their needs generate these or those requirements, which ought to be met even though there are costs to local environments, and so forth. Those opposed to morality--there is a long and distinguished philosophical chain from Lao-tsu through Hinckfuss and Pigden--have a point when it comes to such morality. The damage of moralities and moral viewpoints often seems substantially higher than the benefits conferred. That is because the restrictions they impose are heavy, and often work the wrong ways. A sort of cost/benefit assessment of morality thus gets under way, supposedly yielding negative results.

Many are the arguments for morality, beginning with the claim that it is impossible to conduct oneself and one's life without lapsing into moral talk, concepts, practices, and, generalizing, back into morality. Part of the response to such faulty arguments is always that there are distinctions, insisted upon by leading moral theorists themselves, between value matters and morality. And there is a further distinction, tougher to maintain, between practical deontic expressions (practical and expedient oughts and shoulds, for instance) and moral ones. With such devices, anti-moralists, who do have a solid case against objective or absolute moralities, can escape moral hooks.

Making morality work the right ways, where it does figure seriously, is uncomfortably like making weapons work for peace (morality being a main force behind wars and preparation for wars), more like than it ought to be. Nor is it nearly as easy as it was: beating swords into ploughshares, to provide an assault on the environment instead of other creatures, was a pretty easy techno-

logical feat compared with converting an F-11 fighter-bomber or a modern submarine to peaceful purposes (genuinely peaceful ones, that is; of course, like guns in the West, they're peacemakers). For local chauvinism, in one form or another (human, or more likely, national, state, or race), is now deeply entrenched in most bureaucratic arrangements and an integral part of supporting social sciences and technology. Even so, whatever local practices, moral theory can be rectified; the theorizing can be accomplished, even if a new morality is not successfully applied, and must await its post-Armeggedon day. Thus the protracted battle to duly expand morality goes on.

There are two main battle-lines over which ideological wars (quaint to anti-moralists) are fought as regards moral extension issues, lines purportedly marking moral outer bounds. The first line concerns the following cluster of (often equated) notions: moral status, standing, consideration, relevance, considerability, etc. The second line concentrates on a narrower group: moral permissions, rights, etc. These lines will be surveyed in turn.

Against moral standing and simplistic moral typologies

The notion of moral standing, introduced by questionable analogy with the Anglo-American notion of legal standing, is coming to play a major but damaging role in environmental ethics. It is damaging because, very briefly, it would paint a heavy, but rather arbitrary, black/white boundary--segregating off those that have not from those that have moral standing--across much more complex territory.

As to its role, it is sometimes claimed that adoption and defense of a criterion of moral standing is "absolutely basic" in environmental thinking and problem solving; "reasonably addressing" the issue of moral standing "must be viewed as a benchmark of any plausible 'environmental ethic.'" None of this is so evident, especially given the murkiness of the notion of moral standing. In the same vein, it is stated that "a necessary condition for an adequate ethical theory is the most [!] defensible criterion of moral standing"[1]

Such statements are surely overstate-

ments. For, in the first place, there can be and indeed appear to be ethics which count as environmental ones which do not include a notion of moral standing (e.g., Naess's deep ecology, Rodman's ecological sensibility). Second, elaborations of these theories can make warranted claims to adequacy, without introducing and perhaps explicitly rejecting (for the sorts of reasons given below) a notion of moral standing.

An initial tactical point against the notion of moral standing concerns its origin, on the model of legal standing. Legal standing is a dubious model for any sufficiently comprehensive notion of sometimes entering into moral consideration (which can be true of almost anything). For one reason, it imports some decidedly restrictive assumptions concerning interests and rights of whatever has such standing. But many things of value which enter into ethical assessment on occasions do not have and are not the sorts of things that can significantly have interests or hold rights. Legal standing always operates in terms of having certain sorts of interests which can be represented, whereas what has or deserves environmental standing may not have interests or be the sort of thing that could have interests even as derived (as in the case of legal persons, such as companies) from those of its members. More often indeed, to have legal standing is to have certain rights, duties, protection, etc., beginning with the right of being able to proceed to the courts.

Of course, there is considerable room to widen the notion of legal standing (which can even exclude environmental organizations) and to admit, through representation, other "claimants" to the courts. Presently, the model is much too narrow, restricting access to certain capitalist persons and claimants. But there are severe conceptual difficulties in the way of broadening the notion of standing to encompass many requisite environmental objects, because again of the limitations the notions of interests and rights impose. Organizations of persons, such as partnerships, coalitions, and so on, do not exceed (easy stretching at most of) these limits, since interests and rights accrue from component members: uninhabited ecosystems, natural monuments, and the like do exceed those limits, considerably. Only by a brazen and implausible overriding of these conceptual limitations (such as Stone is prepared to fancy American courts indulging in) can the

in-built severe internal restrictions of the legal model be overcome.

Still, the inadequacies of its legal analogy could be recognized, the analogy left behind, and a fresh unimpeded account of the now rather free-floating notion offered. VanDeVeer and Pierce are rash enough to propose an explication of moral standing which can be construed along these lines. According to them, "For any thing X, X has moral standing if and only if the continued existence of X or its interests in well-being have positive moral weight." [2] Actually, they say that they're stipulating this, but they're not free simply to stipulate, given that it is a notion with some currency already, something they recognize in proceeding at once to consider various standard answers to their "basic question, Which things have moral standing?" The account proposed is more than a little curious, not to say obscure and scarcely grammatical. Later, they in effect substitute a less tortuous account, namely: "X has moral standing if and only if the (continued) existence or welfare of X has positive moral weight." [3] Either way, the account is circular, since having positive moral weight and having moral standing are interdependent notions. In fact, some of the problems with the account could have been avoided by cutting out the troublesome middle part and moving on to the following simpler, explicitly circular account: X has moral standing if and only if X possesses (or obtains) positive moral weight. But then as an explication the definition might almost as well drop out; it explicates nothing, connecting some near synonyms only.

Perhaps it is better to ask: What work does the notion do? The trouble is that except on particular theories which legislate as to what has moral standing, the notion in fact does very little work in environmental ethics because there is little agreement about what determines it. It is one of those notions whose main home base lies within the confines of traditional chauvinistic ethics, which does not extend or travel well to the wider environmental setting. All the main criteria proposed for moral standing are unsatisfactory; they are not only unstable and rather arbitrary but tend to confuse ethical classifications with biological classifications (such as membership in the species Homo sapiens or in the zoological king-

dom) or with sociopsychological distinctions (such as linguistic capacity or competence or potential personhood).

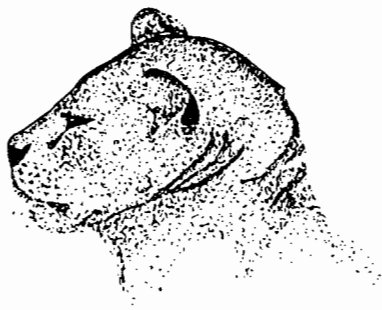
Despite the enthusiasm shown for the notion of moral standing, then, no satisfactory criterion for moral standing emerges or is in clear sight. It remains to be demonstrated that there is a stable, non-arbitrary context-invariant notion of moral standing worth pursuing. The reason for the enthusiasm about this difficult notion that does no present useful work is evident enough: it would decisively delimit the moral search space, what needs to be looked at in moral conflict issues, utilitarian cost/benefit assessments, applications and delimitations of categorical imperatives (which presuppose a moral universe, usually of persons), and so forth. There are as well more sinister ulterior purposes behind some proposed applications of the notion, for instance use of the distinction to reduce the search space towards the confines of the humanistic/chauvinistic fold (partly this is achieved by use of the term "moral"). Moral standing is not a morally neutral notion but a framework and culturally dependent one; hence some of its limitations.

Consider instead of work, instead of straightforward pragmatics, what moral standing is supposed to confer or remove. It is assumed that if X has moral standing, then moral agents have presumptive obligations and duties to X, e.g., to let it alone, not to confine it or undermine its interests. Or, to put it the other way around, if a thing has moral standing, it is entitled to continued existence, pursuit of its interests, whereas if it lacks moral standing, it does not have this protection, it does not count, instead there is entitlement to interfere with it. Indeed, so it is said, "By definition of moral standing, if something lacks moral standing, its well-being just does not itself morally count." [4] The definition, however, delivers no such result; further implausible assumptions (reduction of weight to well-being, equality conditions for counting) from an underlying picture of moral assessment are implicitly incorporated (a utilitarian picture where items without moral standing are discounted and trade-offs of items with moral standing are soon contemplated).

Such application accordingly implies an

unfortunate all-or-nothing division: if an item is in, it gets (careful) consideration, otherwise it gets nothing—exactly what the legal analogy implies, a proper hearing if standing and otherwise nothing. What this black/white division should be contrasted with is not removal of all distinctions but rather a more sophisticated ethical typology based on a listing of ethically relevant features and capacities, such as having value, well-being, preferences, autonomy, and so forth, and appropriate ethical postulates and principles that are geared to these.

That the all-or-nothing character of moral standing needs to be at least modified becomes evident from various distinctions soon introduced to keep it afloat, e.g., duties to (direct duties) as opposed to duties regarding (indirect and perhaps derivative duties). The main strategy adopted in People, Penguins, and Plastic Trees to save the all-or-nothing context-independent boundary consists in appeal to the specially-adjusted notion of presumptive duties. Moral standing is assumed to be necessary and sufficient for presumptive duties; specifically, moral agents "have a presumptive duty to X [to treat it morally decently] if and only if X has moral standing. But presumptive duties are even more prone to be upset by overriding circumstances than the older prima facie



duties (which the notion expands); so the notion operates even more as a theory-saving device. But even as so hedged around and so extended (by derivative duties, duties regarding things without moral standing), the connections forged are much too simple, as will appear. First, a more complex classification of things is required for moral purposes than a hard division into moral countables and others, a nonarbitrary classification such as the above typology. Second, rights and duties, which the notion of moral standing is supposed to bound, link rather with value, and extent of value.

Much of the importance ascribed to moral standing or moral consideration comes from conflating it with value consideration, which is in turn equated with having some (non-negligible) value, bearing value that would be taken into account, and perhaps counted, in any complete value assessment. Though moral attributes are evidently a subclass of value attributes, the conflation is commonplace. Possessing intrinsic or inherent value is even offered sometimes as an alternative to moral status, but more often the confusion is less blatant. Indeed, People, Penguins, and Plastic Trees, which begins by warning us about slipperiness, soon slides itself from moral standing to intrinsic value and before long has identified the moral standing of things with their being "valuable in themselves." However, these notions have different connotations. For example, being morally considerable suggests some suitable moral dimension, some weight to be taken into account, not merely some relevance. Consideration also characteristically requires that the item in question has interests or at least a well-being or such like (a telos) that an agent can be considerate towards. A different notion would not impose these limitations; e.g., those of awe, respect, etc., do not. Nor, it would appear, does moral relevance, yet another different notion sometimes equated with moral standing, though presumably erroneously, since mere artifacts are morally relevant on occasions (for similar reasons, moral significance differs from standing). Moral relevance remains an elusive, context-dependent quarry that has evaded contemporary moral philosophers of high standing, despite much effort put into the chase. Since however, these other notions are not going to be put to serious work—most of them are, like moral standing, better mothballed or scrapped—we can quietly bypass the nuances and differences.

Certainly, moral consideration and value interconnect, with value the wider notion and morality, if not derivative, at least dependent. A most important way in which they connect is through limitations on interference. Morality precludes the gross reduction of value. A little more precisely, a moral actor is not normally entitled to interfere deliberately in such a way as to reduce significantly overall value (or risk the possibility of such reduction). But exact formulation of such noninterference principles is a sensitive matter—mainly because deontic principles do not exclude

some reduction of value, provided it is sufficiently limited--a matter to which we shall be obliged to return.

By contrast with moral considerability, standing, and the like, value notions are fundamental, and not at all easily avoided, even by anti-moralists, in the regions of environmental ethics. Some of the analog notions are trivial, however, e.g., a thing warrants value consideration if and only if it has value. Even so, the analog notions help in shifting the issues and showing where the real problem lies with the group of moral notions, namely in what makes something moral. It is this notion, too, that has induced the unwarranted narrowing of focus to chauvinistic concerns. For a commonplace answer, certainly wrong, to what determines what is moral is: human concerns. Rather, what is moral has to do with interest-independent value and with a certain impartiality and lack of discriminations (i.e., in more old-fashioned forms, with justice and goodness), features reflected formally in suitable universalizability of principle.[5] So conceived, moral matters do not terminate at certain narrower ethical types, which exclude the wider environment. The width of concern would be better revealed by replacing "moral" by its original equivalent "ethical" (for comparison, consider the effect in environmental ethics of a reclassification as "environmental morals" or "environmental morality").

Against environmentally-restrictive rights packages

Ethical standing does not strictly get or grant a thing rights. Standing gets an item in an ethical door for a hearing; it may or may not be conceded or granted rights in the hearing. Rights imply some standing, but not vice versa; some standing is even, if you like, a proper part of a right. While such an equation is not much excuse for identifying standing and rights, still too often the differences are glossed over: having moral rights is equated with having moral standing. Underneath these equations and conventions lie important assumptions; not just the more trivial one that what has a status thereby has a right, for instance to get in the ethical door, but the assumption that having rights and standing or consideration are

rendered equivalent through a common middle term, such as having interests, being capable of being represented, being able to benefit. For example, an item has moral standing (or deserves moral consideration) if and only if it has (or can have) interests, i.e., if and only if it has (or can have) rights. If such faulty equations did hold, what has been said against moral standing would apply also against rights. But they do not, and rights require more independent investigation.

The chief targets for criticism will be certain unduly narrow theories of rights, which would have, if they stood, decidedly unfavorable environmental consequences. Although Regan's particular view, for which he has illegitimately bagged the title "the rights view" (as if an animal rights supporter had to adopt his sort of view), is very far from the worst of these theories, it is worth singling out for special attention, since it has been heavily promoted in environmental ethics literature and it does score exceedingly well, compared with its usual chauvinistic rivals, in certain areas of major environmental concern, such as the (mis-)treatment of animals.

A theory of rights comprises a package containing the following components: a definition of a right, and further postulates (perhaps independently argued for) delimiting rights. There is a good deal of slippage between these two. But because of the more

ordinary usage controls on philosophical theories, only so much in the way of postulates can be pumped into the definitions offered. The package also commonly includes, as well: a set of canonical forms into which all (nondiscarded) rights locutions or cases can be put, and perhaps also (with ground prepared through these canonical forms) a set of reduction schemes for eliminating rights locutions, e.g., by translation, reduction rules, etc.

The particular theory of rights advocated by Regan conveniently lends itself to separation into these components. It begins with a neat definition of right drawn from Mill, according to which a right is, roughly, a valid (or sufficient) claim which society should guarantee. This is coupled with a series of principles or postulates, each given some independent support, of which the most basic is the right of moral agents and

patients to respectful treatment. Although canonical forms are not explicitly addressed, one does emerge, which takes the form "The right of X[s] [not] to -," where "to" introduces an infinitival clause indicating a type of action or activity. The basic form is singular, applying to individuals, who are the only rights-holders on the theory, but it permits pluralization (the features included distributing back onto individuals). Finally, reduction of rights, in particular to some sort of utilitarian analysis, is strongly resisted.

While Regan's rights package will be criticized, and in significant respects rejected, through its variation a different rights theory will emerge. Some of the crucial principles Regan arrives at depend heavily upon--though they do not follow from--the definition of right(s) he defends. And several of the unnecessarily restrictive features of the view do flow from elaboration of this definition, in particular the limitation of rights to certain individual things, to certain animals. It is important then to begin with, and hard to avoid, the issue of definition.

To ground the variant definition and theory of rights to be reached here firmly in usage, consider first the main relevant sense of right (to) given by the oxford English

Dictionary, viz., "II.7 Justifiable claims, on legal or moral grounds, to have or obtain some thing, or to act in a certain way." The account of rights given by Mill (which Regan claims to endorse) contains a similar core: "a person's right is a valid claim upon society to protect him in the possession of something society ought to defend.[6] Mill provides, however, an important insurance or cover clause, as to who is supposed to cover the claim, which the OED account does not include, and which Regan after a brief discussion also correctly omits.[7] That is, right quickly contracts to the less than adequate valid claim, but the force of Mill's insurance cover is supposed to follow, primarily in virtue of what is pushed into the idea of a claim. As it turns out, it does follow, but not in that way.

Regan, now imitating Feinberg's tricks, tries to pull substantive features of rights out of the notion of a claim. But the notion does not bear the weight they try to impose

upon it; a stronger rope is needed for such acts than claim can supply. The crucial act, which tries to read anticipated features of the notion of right into that of claim, fails at the outset: "To make a claim is to assert that someone is entitled to treatment of a certain kind and that the treatment is due or owed directly to the individual in question. To make a claim thus involves both claims-to and claims-against individuals." [8] Such an analysis of making a claim imports much that the ordinary notion does not support, namely in the first place, that it involves or asserts entitlement, entitlement to treatment of a certain sort, second, that it is a transaction between individuals, third, that the imputed treatment is owed directly to the claimant or is a claim-against given individuals. But in making such claims as that one has visited Mount Athos, has seen the lark ascend, took tea at sunset, one is not doing any of those things in any straightforward sense. There is nothing significant due or owed, the assertions need not be directed at other individuals in the demanding way, or at all; and no entitlement to special treatment is asked for. Claim is a transitive verb, so it requires as well as subjects, claimants, objects, claims, propositional items typically introduced by "that" or "to." Someone who makes a claim claims that something or to

(have or have done) something. But that is all. Only some claims are directed against others, only some claims are entitlements. And if it is claims that are entitlements that are to be distinguished, it would be better to start with entitlements.

Just such a fresh start will be made, in the first stage of modification of the OED definitions and integration of it with Mill's definition. Upon separating off legal rights (which Regan correctly distinguishes in pretty much the standard way), the following then results: Rights are valid entitlements, on moral grounds, to something (of a correct category). The changes (from II.7) deserve some justification. First, the phrase "(To) have or obtain something, or to act in a certain way," which gives the characteristic fill to "(to) something," logically adds little content. For each of the sorts of entitlement is an entitlement to something, and conversely an entitlement to something entails an entitlement to have something. Second, "justifiable" is not strong enough; a claimed entitlement may be regarded as justi-

fiable if some sort of justification, which as it turns out is not fully adequate, can be given, whereas for a right the derivation from moral grounds has to be entirely sufficient, i.e., valid. Third and most important, "entitlement" improves upon "claim," not merely for the reasons given, that the claims involved are in any case entitling ones, and that "entitlement" sheds dubious claims-against preconceptions, but also because "claim" unduly and without warrant appears to restrict the expected class of rights havers or holders, what can have or hold rights, to claimants. Of course, the haver of a right need not claim it, but it is hard to escape the assumption that if something has a claim then it should be the sort of thing that can (at least potentially?) make or stake claims. Thus, use of the term "claim" makes it an even tougher uphill struggle to work the powerful rights medicine on behalf of wild animals and wildernesses. Of course too, what claims are made could be made indirectly, through representatives, but the term "representatives" suggests very easily that rights havers have interests to be represented. Opportunity to make the dubious inference from "rights" to "interests" should not be afforded by the basic definition, and "entitlement" gives appropriate distance.

A lot hangs on choice of basic terms then, even if it seems to newcomers, as it does to dictionaries, that "right," "entitlement," and "claim" are more or less interchangeable (each is characterized in standard dictionaries partly in terms of the others) and that definitions like the last one given above are virtually tautologous. Well, satisfactory explicative definitions are analytic, but preferably not trivially circular, else informativeness is sacrificed. A weakness of the entitlement account is that it risks the latter. What is needed in place of "entitlement" is something, a putative entitlement, that becomes an entitlement, or right, when validity is appropriately established, and so on. From this angle, "claim" is a slightly better expression, since a claim sometimes amounts to "a real or supposed right," i.e., it doesn't write in validity. To avoid these problems with available terminology, there is a case for coining a rather immediate expression to fill in that something (after "valid" in the above defini-

tion) and avoid the disappearance of the basic definition into vacuity. A suitable term is "titlement:" a titlement is a putative or alleged entitlement, which may or may not be correctly validated. A titlement is a transformation of a suitable deontic principle, called a sustaining principle. For instance, the form "It is mostly permissible [for X] to A," where suitable, yields the titlement form "There is a titlement [for X] to A." Requirements for suitability, what conditions objects (A's) and subjects (X's) should satisfy, are investigated in what follows.

Before trying for a further definition of right (to), let us return to Mill, as interpreted by Regan. Mill "provides guidance" as to how titlements are to be validated: "the validity of a right, he believes, must depend on its compliance with moral principles whose validity has been independently established,"[9] i.e., correct principles. It is the derivation from these correct moral principles that takes up, removing the slack, the vaguer "moral grounds." With this in mind, we can frame our new definition of right (to) as follows: Rights are valid titlements, from correct moral principles, to some (categorically appropriate) item.

Now, X has a right to A if and only if X has a valid titlement, from correct moral principles, to A, something that a suitable relativized derivation may establish. The candidates to fill out A provide a familiar list, e.g., freedom from unnecessary suffering, respectful treatment, satisfying basic needs, life, rewarding work, a fair go, etc. By no means all of these candidates can be validated without at least considerable qualification, and several restrict the category of subjects, i.e., the logical sort of item that can have the purported titlement.

Such a scheme both enables further features of rights to be derived and reveals much about rights. In the first place, it shows that Mill's important addition to the definition of "right" of a requirement that society ought to protect holders can be separated as a consequence; it is not (as dictionary definitions also indicate) a defining feature. For it is no doubt true as regards correct moral principles that relevant societies ought to uphold them. But such factors as obligation to uphold, transmit over valid

derivations, and therefore apply to titlements. A characteristic point of rights, to insure protection, is thus a consequential feature. Similarly, such diffuse correlative duties as societies' obligations to uphold rights are not part of the definition of rights but a logically emergent feature from their derivative character. In particular, the Feinberg-Regan claim-against component of their proposed analysis is not part of the meaning of right but something that follows from the principles sustaining a right to something. For instance, if it is generally permissible to live free from unnecessary suffering, then others, moral agents, are thereby prohibited from causing unnecessary suffering; and the prohibition factor is transmitted down the derivation. A claim-against certain, typically unspecified, moral agents is also a consequential feature of valid titlements to, transmitted from the sustaining moral principle.

Second, this scheme and definition make it evident that there are no self-evident or purely axiomatic rights: any right that stands up, that commands the title, has a valid derivation. And there is always a defense of rights by reference to such derivations. It follows, then, that any theory that lays claims to self-evident rights or axiomatic rights and any declarations, constitutions, or bills of rights that announce self-evident rights are mistaken. Rights are always derivative from other parts of an ethical system.


Third, the theory shows directly the "derivative character" of rights and helps to indicate the extent of their eliminability. For if rights are ever to be established, then there must, in the end, be correct moral principles, as there are, from which titlements derive. Thus, a requirement of ground holds, and rights are generated from other moral principles, in particular those of permission and obligation. Rights are derivative not in the sense that there is a precise recipe for translating rights discourse out—any adequate translation remains within the rights circle of entitlement, claims, etc.—but in the derivational sense that they derive from another part of the deontic area, that arguments and justifications for them go back to deontic principles.

Because of their multiply derivative

character, rights are dispensable after a fashion and at some cost. So they are not absolutely essential for environmental ethical enterprises. But in a strongly individualistic rights-oriented society, such as the U.S.A., where rights notions (and particularly individual property notions) are taken very seriously, it is a smart strategy to make heavy use of them, after the mode of Regan. Environmental positions can do this also by deriving appropriate titlements.

Rights are not merely derivative, because, for instance, of the force they are accorded and the roles they can play when admitted. As American writers stress, rights are among the weightiest of moral considerations, which trump others (hence the impor-

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tance in a moral or environmental cause of obtaining rights accreditation). Rights certainly have important protective and insurance roles, in sheltering items from powerful actors and interests. For those sorts of persuasive reasons imputed rights are important in reinforcing principles, in getting others to take items seriously, to treat them decently, and so on. The social institutionalization of rights accordingly offers argumentative advantages not to be taken lightly or abandoned. For these sorts of reason, too, rights are not superfluous. Granted that for many purposes we can proceed back to the principles from which rights derive, it is still not a consequence that we can get along as well without them, still less that there is no advantage or point to them.

A fourth set of consequences of the rights package offered here is that there is no basis for various restrictions widely imposed upon the having of rights, such as interests, sentience, etc. Consider interests first, since an "interests" restriction on rights-havers is pervasive. Nothing in the definition and derivation scheme given requires interests (though they could be incorporated in suitability requirements). Yet a crucial premise in the issue of whether things other than persons, animals especially, can have rights links rights-holding with interests. A typical bridge principle is that only items which (can) have interests have moral rights. This principle is not obvious and has had many rivals, notably with "interests" replaced by other candidates put up for gaining moral standing, e.g., rationality, language, sentience, etc.--the same tiresome list.

How then does the interest requirement gain its wide accreditation and grip? For an astonishing series of bad reasons, including:

(1) Usage. We don't speak of items lacking interests (individuality, etc.) as possessing rights. In fact we do, and others have, and non-usage has to be backed by other considerations if arbitrariness and prejudice are to be avoided.

(2) Abysmal analyses. A notable example is Tooley's analysis of "X has a right to A" as roughly synonymous with "If X desires A, then others are under a prima facie obligation to refrain from actions that would deprive him of it."

(3) Mistaken themes. A notable example is

Feinberg's contention that "a right is a protection of an interest, and hence [it is claimed] for something to have a right it must have an interest." Nothing requires, however, that the protection that rights characteristically afford is of an interest; as far as the meaning of "right" goes, it can be of a thing or a system.

(4) Confusion. Perhaps the most notable confusion here is that of having a right with exercising a right or even with being able to claim a right. Though these are evidently different, and entailments from having to exercising or to claiming evidently fail, such conflation is encouraged by easy but unwarranted transitions, such as those from having a claim to making or being able to make a claim. But, to reiterate, rights have nothing highly intimate to do with the making of claims by a holder (though no doubt an articulate maker of claims holds some advantage in achieving its and others' claims). A creature or item with claims may have no ability or competence to make or present them, or be the sort of thing that can.

(5) Contractions. Here the issue is contracting rights to a subclass of rights, such as exercisable rights, interest-protecting rights, accountable rights, etc. Then indeed conative requirements do follow (e.g., what has an exercisable right must presumably at some stage be suitably alive and capable of relevant activity), but such requirements follow from the subclassification involved, not from the notion of right. For instance, the interest-protecting aspect of interest-protecting rights follows from the interest-protecting restriction, not from the notion of rights, which may serve to protect things lacking interests (especially under chauvinistically-favored high redefinitions of "interests").

A related cluster of points applies to attempts to restrict rights to persons or to individuals, attempts also typically underpinned by the assumption that what has or can have rights must have interests, or desires, or a suitable conative life, or whatever. But nothing in the notion of rights restricts rights to persons, or to "persons" in a generous legal sense. Nothing restricts them to individuals, or individuals and "persons." All these restrictions on right-holders are imposed, without much or sufficient justification, usually for ideological reasons, such as blocking legitimate claims on behalf of damaged or disadvantaged items or systems

meriting protection.

Titlements to life and livelihood: predation, territoriality, and other substantial problems

Despite the dust that status-quo-supporting philosophers have raised, there is no doubt, looking through the cloud, but that (a) animals have various interests, many of them of the same sort as those of human animals, for instance, sustenance, survival, sex, and shelter. and (b) animals have various rights. For example, they have, in the same way that humans do, a right to live free from unnecessary suffering, and from excessive interference. While these claims are substantially independent (having interests is logically neither necessary nor sufficient for having rights), there are nonetheless significant connections, inasmuch as rights serve to protect permissible worthwhile interests which more powerful operators, such as de-foresters, may otherwise override or ignore. There is no doubt, furthermore, that present human practices systematically infringe animal rights, especially those tied to their interests. For example, much animal experimentation causes quite unnecessary suffering. Thus, there is a powerful case for changing these practices, a case both enhanced and easier to obtain positive action upon by the due admission of relevant rights. Attainment of the sorts of social protection the widespread admission of rights can lead to should not be underestimated in the way it is by utilitarians and anti-moralists.

Granted animals have rights, some of them on a par with those that humans have, a main outstanding question concerns which rights animals have. Because especially of the widespread phenomenon of predation, essential to the continued livelihood of many creatures, the issue can look like an exceedingly difficult one (and one Regan comes to grief upon). There are undoubtedly serious conflicts of interest induced through the phenomenon, some of them unavoidable, as when a herbivore's interest in continued existence clashes with a carnivore's interest in continued sustenance, others avoidable, as in human slaughter of whales and dolphins. Predation is not, of course, the only source of serious conflict of interests; territoriality, for instance, can also lead to serious encounters, particularly in situations of

expanding populations (thus too the issues are connected).

Such matters as predation, territoriality, and population increase have been converted into serious problems by mistaken atomistic views of value and associated excessive claims as to rights. Removing these defective themes much reduces the problematic. The value theory involved, typified by utilitarianism but an integral part of atomistic non-utilitarian positions such as Regan's, holds that value (or utility) is a feature, at bottom, of atomistic items such as individuals, that those items (constituting the base class) have a fixed (equal) value while they persist, which is not substitutable for or alienable, and that the (derived) values of wholes and organized structures, such as ecosystems, is simply an additive function of the atoms within it. Characteristically also themes of maximization and preservation of present values are incorporated into the theory. On such assumptions, predation and the like involve a reduction in value, at least in the shorter term, and so a suboptimal path, infringing maximization and preservation desiderata. The rights view enhances the problem by postulating a right to continued existence to every individual that has initial (inherent) value (and similarly moral considerability positions add to the difficulties). But the assumptions involved should be removed. Both the way the problems are generated from the assumptions and the reasons for revising the value assumptions are explained in detail elsewhere.[10] Most important, ecosystems, which are more than the sum of their individual components, though they typically include predators, may be highly valuable in their own right, with lives of herbivores substituted for within the system, without reduction of value. The escalation of the problem through rights theories deserves, however, some elaboration.

A serious clash of interests, as between carnivores and herbivores, fortunately does not thereby induce an incompatibility of rights, unless too many interests are elevated to rights. But just this appears to happen when the extensive (but not invariable) interests of living creatures in continuing to exist are sharply upgraded to unqualified rights to life (a mistaken elevation that is common in ethical thought). The right to life of a succession of gnus is

infringed by a lion which also has a right to sustenance to sustain its life. With the advance of technology it would now be possible to interfere in some cases of predation, e.g., that of the remaining large carnivores, to uphold gnu "rights" by switching the carnivores to an appropriate vegetarian diet (and, to avoid culling, our splendid contraceptive technology could be applied to hold gnu population in check). But to deal with all cases of predation and associated issues in these bizarre sorts of ways is not only practically impossible, such extensive interference with natural ecosystems is also itself at the very least dubiously permissible. High-tech vegetarian-style resolutions of problems of predation, territoriality, and so on, are radically unsatisfactory. On the contrary, virtually all remaining natural systems containing large carnivores should be left substantially intact or restored towards their natural states. These ecosystems ought to persist and have a right to though their flourishing involves regular violation of alleged absolute "rights to life."

Can't rights to life be left intact (i.e., merely morally extended from an inauthentic human setting), and the problems skirted around? After all, some conflict and inconsistency even of rights, obligations, and so on are inevitable and can be logically lived with in these latter paraconsistent days. Some can, but not too much. Conflict should be confined to exceptional (often significant) sorts of cases. In these terms, predation is not satisfactorily accommodated by way of conflict of rights or principles. It is too regular, systematic, and commonplace. A sufficiently efficient deontic system does not multiply up conflict cases, because they remove part of the point of deontic structures; for then much too much time is spent repuzzling and redeciding rather analogous conflict cases. A more satisfactory fashion to deal with such regular systematic conflict, which undermines the point and force of principles, is revision of principle. Furthermore, a conflict of rights approach doesn't feel at all right. A lion is not acting wrongly or infringing rights wholesale when it kills an antelope or other creature.



A superior alternative, already indicated, consists in winding in excessive tittlement concessions, so as to avoid extensive conflict. A strong and legitimate interest in a continuing livelihood does not give an unqualified right to life, which can be conferred against associated predators. It affords only a defeasible right, which can be forfeited or lapse. In these terms, a lion that takes a weaker aged gnu, trailing or separated from a herd, does not violate its defeasible right to life. The situation with humans is not essentially different. Weak, ill-equipped, or reckless humans who put themselves in or find themselves in threatening situations, such as high speed action or wilderness travel, take their chances. If they thereby lose their lives, their defeasible right to life are not thereby infringed (and where animals are involved, predatory animals or animals defending their territories should not be persecuted). Wild animals such as gnus are almost always on wilderness travel, except when imprisoned in zoos; they properly take their chances with natural predators.

As pursuit of this approach suggests, a helpful way of coming to grips with predation and like issues is through zoning or more generally through bioregionalism, which zones regions of the earth's surface and elsewhere. For what happens, what is protected, what is permissible and right in wilderness can be significantly different from that in urban areas. A tiger that moves out of a wilderness to a supposedly easier life in a city where incautious citizens are plentiful cannot expect and does not merit the same treatment as it did in the wilderness, namely being left largely alone. Moreover, with bioregions it is much easier to think holistically, to see predation as an integral and significant part of a rich natural structure --rather than isolated action of individuals without a further justifying setting. (The adjustment of ethical principles to regions and large communities need involve no loss of universalizability; "wilderness" is an appropriately general notion, not yet a proper name.)

The action of carnivores (including traditional peoples) in wilderness areas, in taking prey conservatively, in defending their

territories, and so on, involves in itself no infringements of rights then, whether what is



taken is human or not (is "replaceable" or not). There is, moreover, no need to deny that predation with its frequent violence and death may involve loss of value as, for instance, if a carnivore had consumed a trespassing Darwin early in his career. Only a brash utilitarian would insist or pretend that when all the undo-able computations are done, the suffering and losses and replacements of natural systems, net value of overall natural processes is always approximating maximality. On the other side, it would be a supreme technological optimist who thought that human-engineered systems could perform nearly as satisfactorily, even on a quite modest scale. Human efforts, which are especially prone to breakdown, can sometimes make some small improvements around the edges; mostly they rely upon exploiting what is already there or nearby. As a working rule, the more humans interfere with natural processes, the more problems there are and the more things go wrong. Medical experience with intervention, even in matters as normally straightforward as human childbirth, provide well-documented evidence of the rule at work. The chances of humans improving, technically or morally, upon Nature in wilderness areas is exceedingly slight. To adapt one of the ecological "laws" to encapsulate the working rule: Nature generally does better than humans. Its corollary is: Curtail excessive human interference in natural regions.

It does not matter if, because of predation and the like, value is not always as high as it might be. With the persistence of sin and the prevalence of political wickedness, there is copious reason for conjecturing that we do not inhabit the best of possible worlds. Besides, we are free to speculate that the long evolutionary process—no doubt a rather restricted, heavily interfered with, and very hit and miss business—did not turn out as perfectly as it might have. Major ecosystems certainly do not appear to have evolved in a way well adapted to (or anticipating, so to say) the arrival of modern humans with their enormous destructive capacity and will to power. But, even apart from the advent of such humans, it is far from clear that Nature provides an optimal system; rather, Nature "satisfies," i.e., simply does with enough rather than maximizing subject to constraints (a corollary in an Aristotelian adjustment to evolutionary theory).

The facts of satiation do not put Nature out of step with morality, with deontic principles. For deontic principles also answer back eventually to sufficient levels of value, not to maximal consequences. Even if it were best that value be maximized, obligation certainly does not require it. Predation can take a rightful place in such a satiating environment, for the natural systems which have evolved with predation seem to offer quite adequate, and often dazzling, levels of value.



Notes

1. D. VanDeVeer and C. Pierce, editors, People, Penguins, and Plastic Trees (Belmont, California: Wadsworth, 1986): 16, 4.
2. Ibid., 3.
3. Ibid., 4, 16. "Continued" should be deleted, since purely future items may have some moral significance, as may dead ancestors.
4. Ibid., 4.
5. Universalizability is used in the text because it is familiar. But what are really important are intersubstitutivity and replacement principles, which underwrite generalizability and other features.
6. J. S. Mill, Utilitarianism (New York: The Liberal Arts Press, 1957): 66.
7. Tom Regan, The Case for Animal Rights (London: Routledge & Kegan Paul, 1983): 270.
8. Ibid., 271.
9. Ibid., 270.
10. See Section 4 of "In Defence of Cannibalism," in the Green Series published by the Australian National University.